

LONDON BOROUGH OF TOWER HAMLETS

MINUTES OF THE LICENSING SUB COMMITTEE

HELD AT 6.30PM ON TUESDAY, 17 NOVEMBER 2009

**THE COUNCIL CHAMBER, TOWN HALL, MULBERRY PLACE, 5 CLOVE
CRESCENT, LONDON, E14 2BG**

Members Present:

Councillor Motin Uz-Zaman (Chair)

Councillor Fozol Miah
Councillor Rachael Saunders

Officers Present:

Mohshin Ali – (Acting Senior Licensing Officer)
Zakir Hussain – (Solicitor)
Simmi Yesmin – (Senior Committee Officer)

Applicants In Attendance:

John McCrohan - Trading Standards Manager

Objectors In Attendance:

Mahbub Rahman - A&Y Wines
Hasan Durna - City View Food & Wine
Omer Kahraman - Counsel, City View Food & Wine
Sinem Durna - City View Food & Wine
Cen Kaya - City View Food & Wine
Sarah Clover - Counsel, A&Y Wines & Commercial Confectionary
M. Chima - A&Y Wines & Commercial Confectionary
Amir Uddin - Commercial Confectionary
Shuhel Mahmood - Commercial Confectionary
M. Hasim - Commercial Confectionary

1. APOLOGIES FOR ABSENCE

Apologies for absence were received on behalf of;

- Cllr Peter Golds for whom Cllr Motin Uz-Zaman substituted for, and;
- Cllr David Snowdon for whom Cllr Fozol Miah substituted for.

2. DECLARATIONS OF INTEREST

There were no declarations of interest made.

3. RULES OF PROCEDURE

The rules of procedure were **noted**.

4. UNRESTRICTED MINUTES

The unrestricted minutes of the Licensing Sub Committee meeting held on 20th October 2009 were agreed as a correct record.

5. ITEMS FOR CONSIDERATION

The order of business was varied to allow interested parties to attend the meeting. The minutes are set out in the agenda order for ease of reference.

5.1 Application to Review the Premises Licence for A&Y Wines, 116 Brick Lane, E1 6RL (LSC 037/910)

At the request of the Chair, Mr Mohshin Ali, Acting Senior Licensing Officer, introduced the report which detailed the review application for the premise licence for A&Y Wines, 116 Brick Lane, London E1 6RL. It was noted that the review had been triggered by Trading Standards and was also supported by a local resident.

Mr John McCrohan, Trading Standards Manager explained that on three separate occasions, staff had sold alcohol to young people under the age of eighteen undertaking test purchasing exercises with Trading Standards Service. It was noted that test purchases undertaken by Trading Standards departments were carried out in accordance with a nationally agreed Code of Best Practice between the Trading Standards Institute, Local Authorities Coordinators of Regulatory Services and the Department for Culture, Media and Sport.

Mr McCrohan explained that on 30th May 2006, Mr Kobir Ahmed a member of staff sold alcohol to a child aged sixteen. This had resulted in a fixed penalty notice of £80 being given by the Police to the seller. On 5th June 2008, Mr Mohammed Nazrul a member of staff sold alcohol to a child aged sixteen. This resulted in a fixed penalty notice of £80 being given by the Police to the seller. On 21st August 2009, Mr Kobir Ahmed a member of staff again sold alcohol to a child aged sixteen. This also resulted in another fixed penalty notice of £80 being given by the police to the seller.

Mr McCrohan explained that in all three cases where sales were made, it could have been avoided by the seller, by asking the test purchaser his/her age and for them to produce a recommended proof of age card. He explained that to prevent the future sales of this nature, Trading Standards seeks to

have four conditions added to the premises license listed on page 40 of the agenda.

Ms Sarah Clover, Counsel for the Premise License Holders extended her apologies on behalf of the Premises License Holders for the incidents which had taken place. It was noted that they accepted the conditions proposed by Trading Standards and were ready and willingly to work with all regulatory authorities to prevent this from happening again in the future. Ms Clover explained that since these incidents, both members of staff had been dismissed. Ms Clover assured members that they had every confidence that this would not happen again.

There were no questions from Members.

The Chair advised that the Sub Committee would at 7.30pm adjourn to consider the evidence presented. The members reconvened at 7.38pm, the Chair reported that the Sub Committee had;

RESOLVED

That the Review application for A & Y Wines, 116 Brick Lane, London E1 6RL be **GRANTED** with the following conditions added to the premises license;

Conditions

1. The Designated Premises Supervisor (DPS) or a Personal Licence Holder must be present on the premises when all alcohol sales are made
2. The introduction of the Challenge 21 policy and No ID No Sale policy which is supported with signage at all entrances and in the serving area and suitable signage to be prominently displayed inside and outside the premises stating that those aged 21 or over who do not look their age will be asked for proof of ID.
3. Only documentation which include a photograph of the purchaser are acceptable to prove that persons age, eg. passport, new style driving licence, and only PASS- approved age cards, eg. portman card, citizens card.
4. A Refusal book is maintained, which documents the date and time a refusal of sale is made, the reason for the refusal and the member of staff refusing the sale. The Licensee or the Designated Premises Supervisor should monitor the Log on a regular basis and sign it to show it has been done.

5.2 Application to Review the Premises Licence for City View Food & Wine, 457a Bethnal Green Road London E2 9QH (LSC 038/910)

At the request of the Chair, Mr Mohshin Ali, introduced the report which detailed the review application for the premise licence for City View Food & Wine, 457a Bethnal Green Road, London E2 9QH. It was noted that the review had been triggered by Trading Standards.

Mr McCrohan presented his submission by explaining that staff on two separate occasions sold age restricted products to young people below the age of eighteen undertaking test purchasing exercises with the Trading Standards Service. He explained that on 25th November 2007, Trading Standards staff visited the premises and found a quantity of counterfeit Durex trade marked condoms and seized them under Section 93 of the Trade Marks Act 1994, the possession of fraudulently trade marked items.

On 15th March 2009 a member of staff sold cigarettes to a child aged sixteen, this then resulted in a warning letter being sent to the business owner. Again on 18th August 2009, Mr Ismail Ardi a member of staff sold alcohol to a child aged sixteen. This also resulted in a warning letter being sent to the Premises License Holder and Designated Premises Supervisor.

Mr McCrohan explained that in both cases where sales had been made, this could have been avoided by the seller asking the test purchaser his/her age and for him/her to produce a recommended proof of age card. It was noted that the fake condoms had been brought from a man with a van and therefore the reckless way the business bought its stock and the patchy performance of the staff employed by the business had promoted this review.

He further explained that to prevent further underage sales and to improve the management of the premises, Trading Standards sought to have four conditions added to the license listed on page 129 of the agenda.

Mr Omer Kahraman, Counsel for the Premise License Holder stated that they deeply regret the errors made and explained that this had not been intentional but a lack of judgement. It was noted that the conditions proposed by Trading Standards were accepted by the Premises License Holder.

Mr Kahraman with the acceptance of the applicant tabled a document which included a guidance note issued to all staff at City View Food & Wine which detailed employees, guidance for the sale of alcohol & tobacco, and general compliance of the law. He also explained that no member of staff was allowed to purchase stock except for the Premises License Holder. It was acknowledged that the flexibility to allow staff to purchase stock had been misused and therefore this privilege had now been removed. It was further noted that to prevent incidents happening again, no stock is to be accepted without the Premises License Holder's authority. He concluded by stating that genuine efforts have been made to put things right.

The Chair welcomed the positive steps that had been taken and the efforts made by the Premises Licence Holder and noted the prevention measures that were now in place.

There were no questions from members.

The Chair advised that the Sub Committee would at 7.08pm adjourn to consider the evidence presented. The members reconvened at 7.15pm, the Chair reported that the Sub Committee had;

RESOLVED

That the Review application for City View Food & Wine, 457a Bethnal Green Road London E2 9QH be **GRANTED** with the following conditions added to the premises license;

Conditions

1. The Designated Premises Supervisor (DPS) or a Personal Licence Holder must be present on the premises when all alcohol sales are made
2. The introduction of the Challenge 21 policy and No ID No Sale policy which is supported with signage at all entrances and in the serving area and suitable signage to be prominently displayed inside and outside the premises stating that those aged 21 or over who do not look their age will be asked for proof of ID.
3. Only documentation which include a photograph of the purchaser are acceptable to prove that persons age, eg. passport, new style driving licence, and only PASS- approved age cards, eg. portman card, citizens card.
4. A Refusal book is maintained, which documents the date and time a refusal of sale is made, the reason for the refusal and the member of staff refusing the sale. The Licensee or the Designated Premises Supervisor should monitor the Log on a regular basis and sign it to show it has been done.

5.3 Application to Review the Premises Licence for Commercial Confectionery, 141 Commercial Road, London E1 4PX (LSC 039/910)

At the request of the Chair, Mr Mohshin Ali, introduced the report which detailed the review application for the premise licence for Commercial Confectionery, 141 Commercial Road London E1 4PX. It was noted that the review had been triggered by Trading Standards.

Mr McCrohan began by explaining that on two separate occasions, Trading Standards staff had seized tobacco products manufactured outside the European Union without both the United Kingdom fiscal mark and mandatory health warnings. He also explained that on four separate occasions, alcohol had been sold from the premises outside its licensed hours of; Monday to Sunday, from 09:00 hrs to 02:00 hrs.

It was noted that on 24th April 2009, 3680 Benson and Hedges cigarettes were seized under the Consumer Protection Act 1987; the cigarettes appeared to have been manufactured in Bangladesh. On 14th September 2009, another 1400 Benson and Hedges cigarettes were seized under the Consumer Protection Act 1987; once again the cigarettes appeared to have been manufactured outside the European Union.

Mr McCrohan briefly detailed the four separate occasions when alcohol was sold outside the licensable hours, on 19th August 2008 at 8.20am a bottle of Rose wine was sold to a Licensing Officers. Mr Amir Uddin, Premises Licence Holder, accepted a simple caution on 25th November 2008 admitting to the offence on 19th August 2008. On 22nd November 2008 at 02.10am Licensing Officers brought a bottle of red wine, on 20th December 2008 a bottle of Cobra beer was sold to Licensing Officers and again on 13th June 2009 at 03.16am two bottles of Smirnoff Ice was sold to Licensing Officers.

Mr McCrohan referred the Licensing Sub Committee to the guidance issued under Section 182 of the Licensing Act 2003, in particular paragraphs 11.22 to 11.27, which states where there is certain criminal activity that may arise in connection with licensed premises, the secretary of state considers should be treated particularly seriously, and that revocation of the license should seriously be considered, even at first instance.

Mr Mcrohan concluded that in the opinion of the Trading Standards Service the sale of alcohol outside the time restrictions set out in the premises license; show that the Premises License Holder ignored his responsibilities under the Licensing Act 2003. Therefore Trading Standards Service respectfully submitted that the Sub Committee exercises its power under Section 52 of the Licensing Act 2003 and revoke the premises license.

In response to a members question it was noted that six warning letters had been sent to the Premises License Holder regarding the above incidents.

Ms Sarah Clover, Counsel for Mr Amir Uddin, Premises License Holder, stated that the review seemed somewhat out of the blue, as there had been no history of regulatory bodies working with the premises to help prevention. She acknowledged the seriousness of incidents however believed that revocation would be the ultimate sanction.

She then gave a brief background history of the premises, and highlighted the fact that Mr Uddin had been assaulted during April 2009 and as a result was hospitalised. This was when he had hired a temporary member of staff, Ms Nipa Begum to manage the shop during his absence and it was she who was responsible for the sale of imported cigarettes. It was noted that she was dismissed shortly after Mr Uddin returned to work and found out what had happened.

The second lot of cigarettes which had been seized were Mr Shuhel Mahmood's (member of staff) cigarettes and were for his own personal use, they had been kept in the store room for him to take home but he had forgotten, and therefore these were later seized.

Ms Clover continued to explain that Mr Mahmood had been the person who had sold alcohol on two of the four occasions when there was sale of alcohol outside licensed hours. As a result of this Mr Mahmood had been given a final written warning and been sent on a training course. Ms Clover stated that these incidents had occurred while Mr Uddin was off work and therefore there

was a loss of management control, however this was now resolved. The effects of revocation for Mr Uddin and his members of staff were noted.

Ms Clover, with acceptance from the applicant tabled photographs of the premises which showed notices that were displayed in the shop outlining the times when alcohol could be served. Ms Clover concluded by referring the Sub-Committee to relevant guidance and case law which supported her submission not to revoke the premises license.

In response to a councillor's question, Mr Uddin clarified that the first seizure of the cigarettes was in April 2009 which was when he was unwell and not at work, and the second incident was when a member of staff had kept them in the premise for his personal use, however this was not known to Mr Uddin.

Ms Clover explained the steps that had been taken to resolve matters, ie. blanket ban on cigarettes from outside being brought inside the shop by staff, regular checks are to be carried out, staff to undertake regular training, and to display suitable signage highlighting the licensed hours for the sale of alcohol and to have shutters to conceal the alcohol display after the licensed hours.

The Chair advised that the Sub Committee would at 7.58pm adjourn to consider the evidence presented. Members reconvened at 8.25pm, the Chair reported that Members wished to ask further questions of the Premises License Holder.

Members expressed concerns over the number of times alcohol had been served outside the licensed hours and therefore asked Mr Uddin to confirm who had served customers on those four occasions; Mr Amir Uddin explained the following;

19th August 2008 – Mr Shuhel Mahmood (member of staff)

22nd November 2008 – Mr Shuhel Mahmood (member of staff)

20th December 2008 – Mr Jasim Uddin (member of staff)

13th June 2009 – Mr Jasim Uddin (member of staff)

It was noted that the majority of times it was because they did not see the time and as a result of this Mr Jasim Uddin had been dismissed.

Members also asked what measures were in place to prevent this from happening again, it was noted that shutters would be placed over the alcohol display when the licensed hours was not in operation, cigarettes from outside would not be permitted inside the shop by staff unless it was an opened packet. Mr Mahmood had been sent on a training course and all members of staff would also be regularly trained.

There were no further questions.

The Chair advised that the Sub Committee would at 8.30pm adjourn to consider the evidence presented. The Members reconvened at 8.40pm, the Chair reported that the Sub Committee had;

RESOLVED

That the Review application for Commercial Confectionary, 141 Commercial Road, London E1 4PX be **GRANTED** with the revocation of the licence for the sale of alcohol.

Reasons for Decision;

After hearing representations from both parties, Members reached the decision to GRANT the application and grant the revocation of the licence for sale of alcohol. Members noted the guidance that they were referred to by the Licensee's Counsel and also the guidance that they had been referred to by Trading Standards.

Members did consider the imposition of conditions to alleviate the strong concerns that they had about the numerous breaches of licensing and other legislation, but were not confident that conditions would resolve the issues.

In reaching their decision, Members were particularly concerned that the licensee had received numerous warnings and had even accepted a simple caution in relation to offences committed over a lengthy period of time.

The meeting ended at 8.45pm

Chair, Councillor Motin Uz-Zaman
Licensing Sub Committee